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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,634	02/07/2002	Jerry Shifman	94-25b	2618

30699 7590 08/12/2003

DAYCO PRODUCTS, LLC
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MIAMISBURG, OH 45342

EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

8

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,634

Applicant(s)

SHIFMAN ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-35 and 37-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-35 and 37-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 32-35, 37-46 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feit et al in view of Johnson et al and any one of E.P. 432,911, Coran et al or Novak et al optionally further in view of DyneonTM Fluorothermoplastics products information and Viton Fluoroelastomer Technical Information for the same reasons as expressed in paper no. 6, paragraph 2.
3. Claims 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 2 further taken with the applicant's admitted prior art for the same reasons as expressed in paper no. 6, paragraph 3.

Response to Arguments

4. Applicant's arguments filed 7-1-03 have been fully considered but they are not persuasive.

The applicant does not dispute that the reference to Feit suggested that one skilled in the art of making a hose construction would have incorporated a fluorothermoplastic of the same type described and claimed by applicant as the barrier layer. The reference, as noted in paper no. 6, failed to incorporate a fluoroelastomer blended with the fluorothermoplastic. The reference to Johnson, as argued by applicant, failed to teach the specified blend of the fluorothermoplastic with the fluoroelastomer. It is agreed that the reference did not expressly disclose the same fluorothermoplastic in the disclosed blend in Johnson. The question to be answered here, however, is would it have been obvious to incorporate a fluoroelastomer with the

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fluorothermoplastic of Feit in the hose. The applicant is advised that in order to render the finished assembly one that was less brittle at low operating temperatures and to provide the hose with greater elongation, one skilled in the art would have been led to incorporate a blend of a thermoplastic fluoropolymer and an elastomeric fluoropolymer. The reference to Johnson clearly suggested the same fluoroelastomer as the elastomeric component of the blend. Additionally, while Johnson did not expressly state that one skilled in the art would have incorporated the specified terpolymer as the fluorothermoplastic, one viewing the reference would have understood that the fluorothermoplastic was not limited to only the copolymers recited but additionally could include a termonomer in the mixture. While the example of the termonomer did not expressly include tetrafluoroethylene, one skilled in the art would have recognized that the material did not exclude the same (and that the specified termonomers were merely exemplary of the materials useful in the operation).

As expressed by any one of E.P. 432,911, Coran et al or Novak et al, one skilled in the art of hose manufacture would have known to blend a thermoplastic polymer with an elastomeric polymer in a layer of the hose construction. Clearly, for the benefits identified by Johnson (reduction in the stiffness and/or brittle characteristics of the hose), one skilled in the art would have understood to blend the fluoroelastomer disclosed by Johnson with the fluorothermoplastic of Feit in the barrier layer disclosed therein. One would have expected reasonable success in making such a modification as Johnson suggested such blending of similar thermoplastic and elastomeric fluoropolymers to achieve the expected benefit of reduction in the brittleness of the hose.

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Regarding the references to Viton and Dyneon, these were only cited to show that in fact the fluoropolymer employed by Feit was in fact a thermoplastic fluoropolymer and that the elastomer employed by Johnson was in fact an elastomeric fluoropolymer of the type recited in the claims. Additionally the applicant did not address the admitted prior art other than to state that the combination failed to cure the deficiencies of the other references. However, as addressed above there are no deficiencies in the combination of Feit and Johnson and one skilled in the art would have been motivated to practice the invention as claimed.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

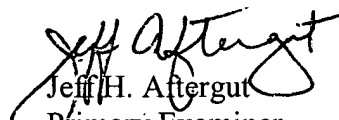
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
August 6, 2003